
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARLON ALONZO SMITH,

Defendant.

**MEMORANDUM DECISION AND
ORDER DENYING MOTION FOR
LEAVE TO PROCEED *IN FORMA
PAUPERIS***

Case No. 2:16-cr-00020-DN

District Judge David Nuffer

Defendant seeks leave to appeal *in forma pauperis*¹ the memorandum decision and order denying his motion to reconsider the denial of his motion for sentence reduction under USSC Amendment 821 (“Motion”).

“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.”² Additionally, under [28 U.S.C. § 1915\(a\)\(1\)](#), a prisoner seeking to appeal in a criminal action *in forma pauperis* must “submit[] an affidavit that includes a statement of all assets such prisoner possess that the person is unable to pay such fees or give security therefor.”³ Such affidavit shall state the nature of the . . . appeal and affiant’s belief that the person is entitled to redress.”⁴

¹ Motion for Leave to Proceed in forma pauperis (“Motion”), docket no. 265, filed under seal Mar. 22, 2024.

² [28 U.S.C. § 1915\(a\)\(3\)](#).

³ *Id.* § 1915(a)(1).

⁴ *Id.*

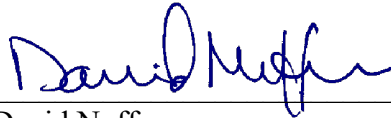
Defendant's motion to reduce sentence under USSC Amendment 821⁵ was denied on January 16, 2024.⁶ Defendant did not file a notice of appeal regarding the denial of the motion. Instead, on February 21, 2024, Defendant filed a motion to reconsider the denial,⁷ which was denied.⁸ Defendant then filed a notice of appeal regarding the denial of his motion to reconsider.⁹ And Defendant's now seeks with his Motion to proceed on the appeal *in forma pauperis*.¹⁰

Defendant did not file an affidavit supporting his Motion as required by 28 U.S.C. § 1915(a)(1). And neither Defendant's notice of appeal nor his Motion state the nature of his appeal or the basis on which Defendant believes that he is entitled to redress. There is no reasonable basis for any alleged error in Defendant's appeal, and his appeal presents no substantial question for review. Therefore, it is certified that Defendant's appeal is not taken in good faith.¹¹

IT IS HEREBY ORDERED that Defendant's Motion¹² is DENIED.

Signed March 29, 2024.

BY THE COURT



David Nuffer
United States District Judge

⁵ Petitioner's Motion for Reduction of Sentence, [docket no. 254](#), filed Nov. 6, 2023.

⁶ Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2), [docket no. 259](#), filed Jan. 16, 2024, docket no. 260, filed under seal Jan. 16, 2024. The first page of the order is public while the second page of the order is filed under seal.

⁷ Motion for Reconsideration, [docket no. 262](#), filed Feb. 13, 2024.

⁸ Memorandum Decision and Order Denying Motion for Reconsideration, [docket no. 263](#), filed Feb. 21, 2024.

⁹ Notice of Appeal, [docket no. 264](#), filed Mar. 22, 2024.

¹⁰ Motion at 1.

¹¹ 28 U.S.C. § 1915(a)(3).

¹² Docket no. 265, filed under seal Mar. 22, 2024.